

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

JOHN EMBRY,

Plaintiff,

Case No. 3:21-cv-233

vs.

SIMON & SIMON, P.C., *et al.*,

District Judge Michael J. Newman
Magistrate Judge Peter B. Silvain, Jr.

Defendants.

ORDER: (1) ADOPTING THE REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE (DOC. NO. 46); (2) GRANTING IN PART AND DENYING IN PART DEFENDANTS' REQUEST FOR SANCTIONS; AND (3) DIRECTING DEFENDANTS TO SUBMIT A MEMORANDUM REGARDING COSTS ON OR BEFORE APRIL 29, 2024

This case is before the Court on Defendants' request for sanctions and the Report and Recommendation of United States Magistrate Judge Peter B. Silvain, Jr. (Doc. No. 46), to whom this case was referred pursuant to 28 U.S.C. § 636. Judge Silvain held oral argument on the matter on November 29, 2023. *See* Doc. No. 46. He subsequently recommended the Court grant in part and deny in part Defendants' request for sanctions against Plaintiff's counsel, John Hui Li ("Mr. Li"). *See* Doc. No. 46. Defendants timely filed an objection to the Report and Recommendation. *See* Doc. No. 47. As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all findings in this matter, including Defendants' objections.

Upon careful *de novo* consideration of the foregoing, the Court determines that the Report and Recommendation (Doc. No. 46) should be adopted. The Court agrees with Judge Silvain's conclusion that, although Defendants demonstrated Mr. Li's conduct throughout this litigation

warrants the issuance of some sanctions, Defendants did not produce any evidence pointing to how his conduct multiplied case proceedings or caused Defendants to incur excess costs. Doc. No. 46 at PageID 555-56. Judge Silvain also explained how Mr. Li's behavior strained this Court's time and resources more than it did opposing counsel. *Id.*

Defendants' objection asserts the position that Judge Silvain did not consider sanctions under the Court's inherent authority in his Report and Recommendation. *See* Doc. No. 47. Instead, Defendants argue that Judge Silvain only considered the availability of sanctions under 28 U.S.C. § 1927. *Id.* This objection, however, does not change the Court's analysis or conclusion. The Court agrees with Judge Silvain's conclusion that sanctions are appropriate "to the extent that the Defendants[] incurred excess costs, expenses, and attorneys' fees because of Mr. Li's filing of the Motion to Withdraw or Amend Deemed Admissions" (*see* Doc. No. 46 at PageID 560) and declines to impose sanctions to any further extent. Defendants also requested a hearing before this Court in their objection to the Report and Recommendation. Doc. No. 47 at PageID 565. The Court declines this request because (1) the Report and Recommendation will be adopted in full, and (2) the Court sees no reason to have another hearing on this issue when it has already been fully argued and briefed.

Accordingly, the Court hereby: (1) **ADOPTS** the Report and Recommendation in full (Doc. No. 46); (2) **GRANTS IN PART AND DENIES IN PART** Defendants' request for sanctions; and (3) **DIRECTS** Defendants to submit a memorandum regarding costs on or before **April 29, 2024**.

IT IS SO ORDERED.

Date: April 15, 2024

s/ Michael J. Newman
Hon. Michael J. Newman
United States District Judge